



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of:

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/173773

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 20, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services ["MiLES"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone from Madison, Wisconsin on May 10, 2016.

The issue for determination is whether the Division of Hearings and Appeals ["DHA"] has jurisdiction to decide the merits of this tax intercept matter.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

BY: [REDACTED] Income Maintenance ["IM"] Specialist  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County, Wisconsin.

2. The following Claim was established against petitioner for an overpayment of FS: Claim Number [REDACTED]; February 1, 2013 to May 31, 2013; original amount of \$1,831.00 (as stated on the *Notification of FS Overissuance* dated October 3, 2013) with a current outstanding balance of \$368.00.
3. Petitioner was sent a letter notice from the State of Wisconsin dated December 12, 2014 and entitled *Important Notice About Your State Tax Refund and Credits*; the written notice stated that petitioner's Wisconsin State Tax Refund may be intercepted in the total amount of \$1,739.00 to repay the FS overpayments identified in *Findings of Fact #2*, above; the written notice also notified petitioner of her appeal rights, including the 30-day time limit for requesting a Hearing; the written notice was sent to petitioner's last-known address which was petitioner's current address at the time.
4. Petitioner requested a Hearing via telephone on April 20, 2016; the *Request For Fair Hearing* form that was completed for petitioner indicated that petitioner was requesting a Hearing concerning "FoodShare . . . Over-Payment" but her request was processed as a request for a Hearing concerning the FS tax intercept noted in *Findings of Fact #3*, above.

### DISCUSSION

An appeal of a tax intercept is timely only if a Hearing is requested within 30 days after the date of the tax intercept notice. Wis. Stat. §§ 49.85(3)(a)2. & (b)2. (2013-14); See also, Wis. Admin. Code § HA 3.05(3)(b) (February 2013). A Hearing request that is not made within the allowed 30 days must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

In this case, the tax intercept notice is dated December 12, 2014. Petitioner's request for a Hearing was not made until April 20, 2016. This is well outside of the allowed 30 days. Thus, petitioner's appeal is not timely and must be dismissed for lack of jurisdiction.

In the case of a tax intercept all that is required is that the *Important Notice About Your State Tax Refund and Credits* letter notice be sent to the last-known address. Wis. Stat. §§ 49.85(3)(a)intro. & (b)intro. (2013-14). That was done in this case. Petitioner does not deny receiving that letter notice. However, she states that she did not request a Hearing sooner because she trusted her uncle "to take care of it." This is unfortunate, but does not create jurisdiction where none otherwise exists.

Petitioner disputes the underlying overpayment. She claims that she never lived with her uncle and that her uncle, the FS household case head, frequently included her in his FS household. It is noted that the *Request For Fair Hearing* form that was completed for petitioner indicated that petitioner was requesting a Hearing concerning "FoodShare . . . Over-Payment" -- but her request was processed as a request for a Hearing concerning the FS tax intercept. Petitioner is entitled to a Hearing concerning the underlying alleged overpayment (a threshold issue at that Hearing may be whether or not she made her request for an overpayment Hearing in a timely manner). Petitioner's request for a Hearing concerning the underlying overpayment will be processed and set for a Hearing and petitioner will be notified via U.S. Mail of the Hearing date and time.

## CONCLUSIONS OF LAW

For the reasons discussed above, DHA does not have jurisdiction to decide the merits of this tax intercept matter.

**NOW, THEREFORE, it is**

### ORDERED

That the petition for review herein be and the same is hereby DISMISSED insofar as the tax intercept matter is concerned; however, petitioner's request for a Hearing concerning the underlying overpayment will be processed and set for a Hearing, if the underlying overpayments are sustained after that overpayment Hearing then MiLES may certify the amount of \$1,739.00 to the Department of Revenue, pursuant to Wis. Stat. § 49.85 (2013-14), for purpose of a tax intercept of petitioner to repay the FS overpayment Claim identified in *Finding of Fact* #2, above.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

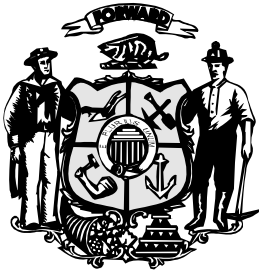
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 12th day of May, 2016

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\sSean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals





**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on May 12, 2016.

Milwaukee Enrollment Services  
Public Assistance Collection Unit